to another the mark of the Goldsmiths' Company, it was found that there was absolutely no intent on his part to defraud; yet he was convicted. In such cases, the intent, so far from being criminal, is good; but the courts go upon grounds of public policy. The same principle is expressed in a case in the United States Supreme Court,[1] and has been discussed and followed in a number of cases in Massachusetts.[2]

II. In general, however, a wrongful, though not necessarily a criminal, intent is essential. This must be interpreted in a very conventional manner, as fixed by the constructions of the courts. But there are qualifications of this principle, viz.: —

(1.) It is not necessary that the intent should be to do the act specified. For example, where a woman, in attempting to commit suicide, shot the man who was interfering to save her, she was held guilty of manslaughter.[3]

(2.) Where there is an intent to do a wrongful act, and the results are more serious than was contemplated, but are in the natural line of what was done, the wrong-doer is deemed to have intended the complete act which was done. For example, if A strikes B, and as a result of the blow B dies, A is guilty of manslaughter.[4]

(3.) When one's accomplice in a proposed wrong goes further in the perpetration of it than was contemplated, one is deemed to have intended all that his accomplice actually does. For example, A and B go out with the purpose of robbing C; A kills C by mistake; then B is liable, though he took no part in the killing, and had not the remotest idea that A would accomplish it.[5]

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — FRAUD — REMEDIES OF PRINCIPAL.— The commissions which an agent corruptly receives in return for dealing with a particular firm, cannot be followed by the principal into the agent's investments. The relation between the defendant and the plaintiffs is that of debtor and creditor, not trustee and *cestui que trust*. *Lister & Co.* v. *Stubbs*, 45 Ch. Div. 1 (Eng.).

AGENCY — FRAUD — REMEDIES OF PRINCIPAL.— Where an agent, in return for a bribe, induces his principal to pay for an article more than its market price, the principal has two distinct and cumulative remedies. He can recover such bribes from the agent as money had and received to his use, and may also, without deducting the above amounts, recover from the agent and the briber, jointly or severally, damages for any loss he may have sustained by such purchase in excess of market rates. *Mayor, etc., of Salford* v. *Lever*, 25 Q. B. D. 363 (Eng.).

BILLS AND NOTES — QUALIFIED ACCEPTANCE. — Acceptance of a bill of exchange "in favor of" the payee "only," does not render the bill non-negotiable. It is not a qualified, but a general, acceptance. *Decroix & Co.* v. *Meyer & Co.*, 25 Q. B. Div. 343 (Eng.).

CONTRACTS — ACTION BY BENEFICIARY. — B., for a consideration, contracted to support A.'s wife, and save A. and his estate free from all claims by her, and gave

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[1] *U. S.* v. *Reynolds*, 98 U. S. 145.
[2] For example, *Com.* v. *Mash*, 7 Met. 472.
[3] *Com.* v. *Mink*, 123 Mass. 422.
[4] *Reg.* v. *Bradshaw*, 14 Cox, C. C. 83.
[5] *Reg.* v. *Jackson*, 7 Cox, C. C. 357.

a mortgage to secure the contract. *Held*, that the wife could enforce the contract by a bill to charge the mortgaged property with her support. *Coleman* v. *Whitney et al.*, 20 Atl. Rep. 322 (Vt.).

CONTRACTS — ILLEGALITY — PUBLIC POLICY. — Action upon a promissory note. The note was given by the defendant in payment for forty bushels of oats, bought by him at fifteen dollars per bushel. A part of the contract was that the vendor should within a year sell for the defendant eighty bushels of oats at fifteen dollars per bushel. *Held*, that this contract, though not a gambling contract, was yet void as against public policy. For it cannot be carried out without defrauding somebody. Hence the note was void. *Merrill* v. *Packer*, 45 N. W. Rep. 1076 (Ia.).

CONVERSION — UNAUTHORIZED SALE OF STOCK. — The defendants held one hundred shares of stock subject to the plaintiff's order. On an order purporting to come from him, they sold one hundred shares; but they had on hand during the whole transaction at least one hundred shares of that stock over and above all claims. The court *held* that the defendants were not bound to have on hand any particular certificate, and that therefore they were not guilty of conversion. *Caswell* v. *Putnam*, 24 N. E. Rep. 287 (N. Y.).

CORPORATIONS — TAX ON FRANCHISE. — A New York statute provides that all corporations, with certain exceptions, that do business within the State shall be subject to a tax upon its "corporate franchise" to the amount of a certain per cent. upon its capital stock. *Held*, that the tax is upon the privilege of being a corporation and not on the capital stock. It therefore is not rendered invalid because part of the capital stock is invested in United States bonds. Miller and Harland, JJ., dissenting. *Home Ins. Co. of New York* v. *State of New York*, 10 Sup. Ct. Rep. 593.

EQUITY JURISDICTION — ASSIGNMENT OF PATENTS BY MASTER. — The statutes of Massachusetts give authority to the court to assign choses in action, and therefore the court will decree that the master make and deliver an assignment of letters-patent if the defendant refuse to assign them, although the court has not possession of them. W. Allen and Field, JJ., dissenting both on the right of the court to act *in rem* in such a case and on the power of the court to make any effectual assignment without at least the possession of the letters-patent. *Wilson* v. *Fire Alarm Co.*, 24 N. E. Rep. 784 (Mass.).

EQUITY JURISDICTION — INJUNCTION OF CRIMINAL PROCEEDINGS — SALES IN ORIGINAL PACKAGES. — Though it is a well-settled general rule of equity jurisprudence that a court of equity never extends its jurisdiction to the enjoining of criminal proceedings, yet the rule has its exceptions. One of these is, where a threatened criminal proceeding is vexatious and involves a destruction or injury to property; and, especially, under circumstances where the party injured would have no adequate remedy at law for restitution. On this ground the federal courts will issue injunctions, against proceedings by a State attorney, to prevent the enforcement by him of State laws prohibiting the sale of intoxicating liquors in the original packages in which they were imported, in violation of the interstate commerce clause of the federal constitution. That such a proceeding is not a suit against a State within the 11th Amend. of U. S. Const., see *Tuchman* v. *Welch*, 42 Fed. Rep. 548. *M. Schandler Bottling Co.* v. *Welch*, 42 Fed. Rep. 561.

EVIDENCE — HEARSAY. — In ejectment against deceased's widow, she may introduce deceased's declaration that he had bought the land, not with a view to set up his title, but for the purpose of showing that his possession was adverse under the Statute of Limitations or otherwise. *Mississippi County* v. *Vowles*, 14 S. W. Rep. 282 (Mo.).

EXECUTORS AND ADMINISTRATORS — REIMBURSEMENT FROM LEGATEES AFTER DISTRIBUTION. — An executor handed over to K. the certificates for certain shares of stock not fully paid up, but no transfer was executed. After the estate was completely settled, the executor was compelled to pay calls on the stock standing in his name. *Held*, that the executor could recover from K. the amount paid. Notice of a debt prevents the executor from recovering under these circumstances; but knowledge that, since the shares were only partly paid up, a call might sometime in the future be made, was notice, not of a debt, but of a liability. *In re Kershaw*, 63 L. T. Rep. N. S. 203 (Eng.).

This case goes farther than *Jervis* v. *Wolferstan*, L. R. 18 Eq. 18, which it

professes to follow. In the earlier case the executors would be called on only in case the company failed, a "remote, contingent, unexpected liability." This fact is emphasized in the opinion. The present case lays down the clear rule that "notice of a liability is not sufficient to deprive the executors of their right to recover. It must be notice of a debt."

INSOLVENCY — PROCEEDINGS BY ASSIGNEE. — A Massachusetts creditor, knowing that his debtor was in fact insolvent, sold his claim to a citizen of another State before the debtor was adjudged insolvent, to enable the purchaser to maintain an action on the claim in another State after the debtor was declared insolvent. The creditor agreed to pay the costs of collection and also any deficit, if the full amount of the claim should not be recovered. *Held*, that the assignee in bankruptcy of the debtor could not recover from the creditor the amount obtained from his claim, as the statutes give no such remedy; nor can the defendant be enjoined from prosecuting the action in another State, for the buyer of the claim has obtained the right to prosecute it for his own benefit. Whether the creditor could be prevented from proving his other claims against the insolvent was not decided. *Procter* v. *Bank of the Republic*, 25 N. E. Rep. 81 (Mass.).

MASTER AND SERVANT — WHO IS AN EMPLOYEE. — The plaintiff, a switchman for defendant company, "off duty," boarded one of its trains of his own accord, and was ordered by the conductor to turn a switch, in the performance of which act he sustained injury. *Held*, that the conductor had no implied authority to give such a command, and the mere act of obeying it did not constitute plaintiff the defendant's employee so as to bar his action. *McDaniel* v. *Highland Ave. and B. R. Co.*, 8 So. Rep. 41 (Ala.).

MUNICIPAL CORPORATIONS — LETTING OF CONTRACTS. — The charter of Long Island City provides that all contracts shall be let to "the lowest responsible bidder giving adequate security." *Held*, that a *mandamus* will not be granted to compel the mayor to pay a bill audited by the council for work done under a contract awarded to a higher bidder when there was no showing that the lower bidder was not responsible, nor his security inadequate. Under such circumstances the letting of the contract to a higher bidder is not a judicial determination binding on the courts. *People ex rel. Coughlin* v. *Gleason*, 25 N. E. Rep. 4 (N. Y.).

REAL PROPERTY — COVENANT RUNNING WITH THE LAND — EQUITABLE EASEMENT. — A., a brewer and also a dealer in beer, carrying on business at the X. brewery, by indenture leased a public house to the defendant. The defendant covenanted with his lessor, heirs, executors, administrators, and assigns, not to buy or dispose of on the premises any beer other than that purchased of the lessor, etc., provided the lessor, etc., sell such liquors, and are willing to supply the same of good quality and at the market rate. A. sold and assigned his brewery and good-will to B., a brewer carrying on business at the Y. brewery, and assigned to him the public house and the benefit of the above covenant. *Held*, (1) upon construction of the covenant, that the benefit of it was not restricted to assigns carrying on the same brewer's business as the lessors; (2) that the covenant was not personal and incapable of assignment, but a covenant relating to the way in which the business at a particular house was to be carried on, hence it touched and concerned the land, and ran with it; (3) that, whether running with the land or not, the plaintiff could enforce the covenant in equity as assignee of the benefit of it. *Clegg* v. *Hands*, 44 Ch. Div. 503 (Eng.).

REAL PROPERTY — EASEMENT OF ABUTTERS IN HIGHWAYS — STREET RAILWAYS. — A steam railroad which lays its tracks on the surface of a street with the permission of the city is not liable to an abutting owner who does not own the fee of the street for damages resulting from a reasonable use of its rights. The case contains a careful review of the New York authorities, and distinguishes the elevated railroad cases, on the ground that in them the structure was a permanent obstruction of the streets. *Forbes* v. *R. Co.*, 24 N. E. Rep. 919 (N. Y.).

REAL PROPERTY — FRAUDULENT CONVEYANCES. — The defendant paid for and took possession of land, but the conveyance was in the name of the plaintiff to defraud the defendant's creditors. The plaintiff brought an action of ejectment; and it was *held* that the defendant could show these facts and the plaintiff could not recover. *Kirkpatrick* v. *Clark*, 24 N. E. Rep. 71 (Ill.).

The authorities differ widely on this subject. It is believed that there is only one case in the country directly in point, and that agrees with the above case, — *Harrison*

v. *Hatcher*, 44 Ga. 638; but see *Doe d. Roberts* v. *Roberts*, 2 B. & Ald. 367, *contra*. The result is extremely unsatisfactory, for it leaves the plaintiff the legal owner of the land, and if he can in any way get in possession he can keep it.

It was held in *Nellis* v. *Clark*, 20 Wend. 24, and *Dyer* v. *Homer*, 22 Pick. 253, where a note was given in payment for a fraudulent transfer of property and the consideration had failed, that the note could not be enforced. The ground of decision in both cases is that when it appears by the evidence of either party that the transaction was fraudulent, the court will leave the parties just as it found them. But the rule works much more satisfactorily in the note cases, for in them the whole affair is settled and not left in the air.

The rule adopted in other jurisdictions is that no one shall be allowed to set up his own fraud to maintain a claim or a defence, and accordingly it was held in *Brookover* v. *Hurst*, 1 Met. (Ky.) 665, and *Bonesteel* v. *Sullivan*, 104 Pa. St. 9, that a mortgage note given in fraud of creditors would be enforced. See also *Philpotts* v. *Philpotts*, 10 C. B. 85. It is evident that the application of this rule would have led to a much better result in the principal case.

REAL PROPERTY — TRANSFER OF MORTGAGED LAND. — The defendant, by a deed conveying land to him, became bound to the grantor to pay the two mortgages on it. He failed to pay the first note, so the mortgage was foreclosed, and the claim satisfied out of the land. *Held*, that the grantor could recover the amount of the debt secured by the second mortgage immediately. By his contract the defendant was bound not only to relieve the grantor from personal liability, but to discharge the lien of the mortgage; and by his failure so to do the grantor was left without any security for the second mortgage. Field, Devens, and W. Allen, JJ., dissent. *Rice* v. *Sanders*, 24 N. E. Rep. 1079 (Mass.).

SALES — CONDITIONAL DELIVERY. — Goods were sold for cash on delivery, and payment was made by check. *Held*, that the vendor could retake the goods from an innocent sub-vendee on the dishonor of the check, since the payment and delivery were conditional, and the vendor was not "equitably estopped." *Nat. Bank of Commerce* v. *C. B. & N. R. R. Co.*, 46 N. W. Rep. 342 (Minn.).

The court does not define "equitable estoppel," but it would seem that the decision is in direct conflict with the N. Y. doctrine as expressed by *Comer* v. *Conyngham*, 77 N. Y. 391. A concise statement of the authorities upon this point will be found in Benj. on Sales, 4th Am. ed. § 320, n. See also 15 Am. L. R. 381.

SALES — FACTOR'S ACT — DOCUMENT OF TITLE. — *Held*, that a receipt for whiskey stored in a bonded warehouse of the United States is not a document of title within the meaning of the Factors' Act of Kentucky, which provides that "any custom-house permit, warehouse receipt, etc., shall be deemed a document of title." The act cannot be understood to refer to bonded warehouses, as they are subject only to the regulation of Congress, and in the charge of officers of the United States. *George* v. *Fourth Nat. Bank*, 41 Fed. Rep. 257.

STATUTE OF FRAUDS — PAROL — PARTITION. — A parol partition of lands, made definite by marking a line on the ground, followed by occupancy in pursuance thereof, is sufficient to rest title. *McKnight* v. *Bell*, 19 Atl. Rep. 1036 (Pa.).

This case settles the Pennsylvania law in accordance with a much earlier decision (1 Bin. 216), and finally disperses the doubt occasioned by the case of *Gratz* v. *Gratz*, 4 Rawle, 411. The weight of authority is against this view.

TRADE-MARK — INJUNCTION. — An agent of the defendant, when asked by complainant's agent for a cake of "Sapolio," publicly delivered, without explanation, a scouring or sand soap known and stamped as "Pride of the Kitchen," of a different size and shape from "Sapolio," and contained in a wrapper of entirely different appearance. *Held*, that this was, in effect, an assertion that the cake delivered was "Sapolio," and an infringement of a trade-mark, the right of property in which belonged solely to the complainant. "It is the object of the law relating to trade-marks to prevent one man from unfairly stealing away another's business and good-will." See 32 Fed. Rep. 97, opinion by Mr. Justice Bradley. In such a case equity will issue an injunction to prevent the fraudulent use of the trade-mark of another. *Enoch Morgan's Sons Company* v. *Wendover et al.*, U. S. Cir. Court, District of New Jersey.

TRADE-MARKS — "UNION" LABELS. — A label adopted by a Cigar-Makers' Union, to be pasted on boxes containing cigars made by its members, is not a

trade-mark, for it does not indicate by what persons the cigars were made, but merely that they were made by members of one of the local unions, and the right to use it depends entirely on such membership, and not on any reputation for skill in the manufacture of cigars. The use of imitations cannot be enjoined, therefore, on that ground; nor can it be prohibited on the ground that the imitations were calculated to make the public believe that the goods were the goods of another. Such an action has never been maintained except by one who was himself a manufacturer or dealer in the articles counterfeited. This action was brought by the members and officers of the "Union," and they cannot show any damage which is not too remote. *Weener* v. *Brayton*, 25 N. E. Rep. 46 (Mass.).

The few cases previously decided on this point are here carefully discussed.

TRUSTS — INSOLVENCY — PREFERRED CREDITORS. — The treasurer of the plaintiff corporation loaned money to the Globe Plow-Works Co. The treasurer had no power to make such a loan, and this fact was known to the Plow-Works Co. when it received the money. The Plow-Works Co. used the money, and afterwards made an assignment, for the benefit of creditors, to the defendant. *Held*, that the defendant held the money subject to the trust with which the treasurer of the plaintiff was charged, and that it would be deducted from the assets in the hands of the assignee before division was made among the creditors. *Davenport Plow Co.* v. *Lamp*, 45 N. W. Rep. 1049 (Ia.).

TRUSTS — INVESTMENT OF TRUST FUNDS. — A trustee invested one-quarter of the trust fund in Union Pacific stock, at 119. Later, he bought nearly as much more at 123. *Held*, that as the road had been constructed at great expense through a new country, it was heavily indebted, and its continued prosperity depended on circumstances which could not be predicted, it was evident that the trustee took a considerable risk, and therefore, although he acted in perfectly good faith and under advice, he was not justified in putting so large a proportion of the fund into such stock, and should be charged with the amount of the second investment. *Appeal of Dickinson*, 25 N. E. Rep. 99 (Mass.).

WILLS — ATTESTATION. — A statute required wills to be attested "in the presence of" the testator. In this case the will was read over to the testatrix in the presence of the witnesses, and then at the wish of the testatrix the witnesses went into an adjoining room and signed it. The witnesses then returned with the will to the testatrix, and it was again read over to her, together with the names of the witnesses. She expressed her approval, and asked one of the witnesses if they (the witnesses present) had signed it, and was told that they had, and the signatures were shown to her. The room in which the witnesses signed was adjoining that of the testatrix, and the door was open, but it was impossible for the testatrix, from where she lay in bed, to see the act of signing. *Held*, that the statute had been complied with. *Cook* v. *Winchester*, 46 N. W. Rep. 106 (Mich.).

WILLS — CONSTRUCTION — PERPETUITIES. — An estate was devised to executors in trust to divide the net income equally among the three daughters of the testatrix, and at the end of ten years to distribute the principal among them in the same proportion. There were no words of survivorship and no provision for the death of a beneficiary. *Held*, that the estate vested in the daughters at the death of the testatrix, and so the devise was not in violation of the New York statute against perpetuities, which declares that the power of alienation shall not be suspended for more than two lives in being. Gray, J., concurred only in the result; Earl, Peckham, and O'Brien, JJ., dissent. *Hillyer* v. *Vandewater*, 24 N. E. Rep. 999 (N. Y.).

REVIEWS.

AN HISTORICAL SKETCH OF THE EQUITABLE JURISDICTION OF THE COURT OF CHANCERY. Being the Yorke Prize Essay of the University of Cambridge for 1889. By D. M. Kerly. University Press, Cambridge, 1890. 8vo. Pages xiv and 295.

In a prize essay, covering so vast a field as the jurisdiction of the Court